

MINUTES OF THE BOARD OF ADJUSTMENT HELD AUGUST 11, 2005, AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS.

Members Present: James Holtkamp, Noor Ul-Hasan, Debbie Tyler, Ferrell Jensen, James Adinaro

Staff Present: City Planner Michael Black, Deputy Recorder Sherry McConkey

Others Present: Mayor Kelvyn Cullimore, Richard Taylor, Dave Harrison

Excused: City Attorney Shane Topham, Community Development Director Kevin Smith, Board Member Paul Throndsen, Board Member Bob Wilde

**1.0 PUBLIC COMMENT**

1.1 No public comment was heard.

**2.0 ELECTION OF CHAIR AND VICE CHAIR OF THE BOARD**

2.1 Farrell Jensen opened nominations for chairperson of the Board of Adjustment.

2.2 Debbie Tyler made a motion to nominate Ferrell Jensen as Board chair. The motion was seconded by Noor Ul-Hasan and passed unanimously on a voice vote.

2.3 Chair Jensen opened the nomination for a vice chairperson of the Board of Adjustment.

Noor Ul-Hasan made a motion to elect James Holtkamp as Board vice chairperson. The motion was seconded by Debbie Tyler and passed unanimously on a voice vote.

**3.0 RICHARD TAYLOR, 3744 EAST PROSPECTOR CIRCLE – REQUESTING A FRONTYARD AND SIDEYARD SETBACK VARIANCE**

3.1 Chair Jensen explained that the applicant is requesting a variance to the front yard setback requirements from 25 feet to 15 feet and the side yard setback requirements from 10 feet to 7 feet on the north side of the property. The property is located in the R-1-8 zone.

3.2 City Planner Michael Black reviewed the location of the subject property explaining that the lot is on a very steep slope. Mr. Taylor is requesting a setback variance from the R-1-8 zoning ordinance from 25 feet to 15 feet in the front yard in order to accommodate a home of similar size to the neighboring homes. Staff is recommending approval of the front setback variance and denial of the side setback variance. Mr. Black explained that Staff believes that without granting a front yard setback variance, the property owner would be unable to enjoy a substantial property right that is enjoyed by the neighbors, which is to have a home of similar size and quality as his neighbors on the lot he purchased.

Mr. Black said Staff does not believe that granting a side yard variance will do anything but allow the applicant to have a larger home and recommended denial of the side yard setbacks.

- 3.3 Chair Jensen opened the public input portion of the meeting.
- 3.4 Richard Taylor, 3744 East Prospector Circle, agreed with Staff comments. He explained that allowing the side yard variance would allow for a greater resale value.
- 3.5 Bill Cosgrove, 3747 East Prospector Circle, said that this is a very difficult lot to build on, he felt that if the side yard variance was granted the house would look 'wedged' in because the house would be wider than the front part of the lot. Mr. Cosgrove is not opposed to the three car garage if it was setback on the property according to code. Mr. Cosgrove also expressed concern about potential fire hazards that the proposed home would create. Mr. Cosgrove suggested fitting the house differently than proposed so there would not be such a visual impact.
- 3.6 David Harrison, 7786 South Prospector, stated that he has concerns with the side setback variance, but is not opposed to the front yard setback variance. Mr. Harrison said that he would like to see the 10-foot side yard setback maintained.
- 3.7 Chair Jensen closed the public input portion of the meeting.
- 3.8 Mr. Black noted for the record that the side setback in the R-1-8 zone is a minimum of eight feet on either side and a minimum of 20 feet between the two side yard setbacks.
- 3.9 Mr. Taylor said that if he could go from a ten foot side yard setback to an eight foot side yard setback that would aid in the design of his home. He noted that some of the scrub oak on the north part of the lot could be removed for fire safety.  
  
Mr. Black asked for clarification on whether Mr. Taylor is asking for an eight foot side yard setback on both sides.  
  
Mr. Taylor requested a 10 foot side yard setback on the south side and an eight foot side yard setback on the north side of the property.
- 3.10 Mr. Black stated that Staff is recommending denial of the side yard setbacks because it is not necessary to satisfy the requirements of having a home on the lot. He stated that approval of the side yard setbacks does not benefit the City and could be more of a detriment to the abutting properties.
- 3.11 Chair Jensen stated that the Board of Adjustment is under very strict statutory guidelines which must be met in granting a variance.

- 3.12 Chair Jensen questioned the number of unoccupied vehicles parked in Prospector Circle.

Mr. Harrison said that a new resident is moving in and has had vehicles parked there for several days. The area is zoned for no parking between 10:00 p.m. and 8:00 a.m. The 'No Parking' signs have been removed during construction of the homes.

Mr. Black referred the residents to the Code Enforcement Officer Mike Dolan to take care of getting the signs replaced.

- 3.13 Ms. Tyler questioned whether the house to the south has the same type of topography.

Mr. Cosgrove said that all three properties have similar topography, but Mr. Taylor's lot is the most affected.

Mr. Harrison said that there is an existing front yard setback variance of ten feet at 3746 East Prospector Circle.

- 3.14 Ms. Ul-Hasan asked that the Board members refer to the five criteria that need to be met in order to obtain a variance. The criteria are as follows:

*(1) Literal enforcement of the Zoning Ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.*

*(2) There are special circumstances attached to the property that do not generally apply to other properties in the same district.*

*(3) Granting the variance is essential to the enjoyment of a substantial property right possessed by other people in the same district.*

*(4) The variance will not substantially affect the General Plan and will not be contrary to the public interest.*

*(5) The spirit of the Zoning Ordinance is observed and substantial justice done.*

Referring to the second criteria, Ms. Ul-Hasan questioned whether the request for the variance was met. She agreed with Staff recommendation that the side yard setback variance be denied.

Mr. Black commented that the item Ms. Ul-Hasan is referring to states "There are special circumstances attached to the property that do not generally apply to other properties in the same district." He reviewed the R-1-8 zone which is approximately 70 percent of the City, and stated that this is a special circumstance.

- 3.15 **MOTION:** Mr. Holtkamp moved to approve the variance for the front yard setback and deny the variance for the side yard setback based on the findings in the Staff Report dated August 11, 2005. He stated the request is clear cut and the Staff Report contains the findings that are necessary. The motion was seconded by Ms. Tyler and passed unanimously on a voice vote.

4.0 **REVIEW OF BOARD OF ADJUSTMENT POLICIES & PROCEDURES**

- 4.1 The proposed Board of Adjustment Policies and Procedures were reviewed.

Mr. Holtkamp said that the policy does not address whether or not alternates that are present can ask questions and engage in discussions. He would like to see something in the policy that provides for that possibility.

Mr. Jensen said that his understanding is that when the full Board is in attendance, he questions how that request would fit in the policy.

Mr. Black said that alternates do participate in Planning Commission discussion, but do not vote. He noted that the City Attorney has an additional attachment for the Board to consider.

Mr. Black suggested that alternates be designated on the name plates

Mr. Jensen recommended that a clock be installed on the back wall.

Approval of the policies will be deferred until the full Board has reviewed them and given feedback.

5.0 **COMMUNITY DEVELOPMENT DIRECTOR'S REPORT**

- 5.1 No reports were given.

6.0 **APPROVAL OF MINUTES**

- 6.1 No minutes were approved.

7.0 **ADJOURNMENT**

- 7.1 Mr. Holtkamp moved to adjourn. The motion was seconded by Ms. Tyler and passed unanimously on a voice vote. The meeting adjourned at 7:47 p.m.

**Approved:** 12/15/05